(2)

No. 90-1982

FILED
JUL 25 1991
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1990

MARY JONES, Mother and Guardian on Behalf of KAREN JONES, an Incompetent, and MARY JONES,
Petitioners,

vs.

DAYTON BOARD OF EDUCATION, MIAMI LIBERTY CAB CO. and EDDIE SLAUGHTER,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENT DAYTON BOARD OF EDUCATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HOWARD P. KRISHER
Counsel of Record
BIESER, GREER & LANDIS, of Counsel
400 Gem Plaza, Third and Main Streets
Dayton, Ohio 45402-1908
(513) 223-3277
Attorneys for Respondent
Dayton Board of Education

Of Counsel:
JOHN F. LENEHAN
DWIGHT A. WASHINGTON
348 West First Street
Dayton, Ohio 45402
(513) 461-3091

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

QUESTION PRESENTED

1. Whether any constitutionally protected interest is jeopardized where a state court judge properly exercises his discretion in refusing to permit unlimited amendments to a complaint filed in state court where counsel fail to comply with well recognized rules of pleading and reasonable prior orders of the court and where counsel fail to exercise other options available in both state and federal court to present their federal claims.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES iv

I. STATEMENT OF CASE AND FACTS 1

II. SUMMARY OF ARGUMENT 5

III. ARGUMENT 6

IV. PETITIONERS' AUTHORITY DISTINGUISHED 11

V. CONCLUSION 13

APPENDIX:

Decision and Entry of February 3, 1989 ..... A1

ExParte Motion Non [sic] Pro Tunc A5

Plaintiffs' First Amended Complaint A11

Plaintiffs' Second Motion to Amend Its First Amended Complaint to Plaintiff's Second Amended Complaint A23

Plaintiffs' Tender of Second Amended Complaint A39

Plaintiffs' Second Amended Complaint A41

Second Amended Complaint and Demand for Jury Trial A51

Constitutional and Statutory Provisions A55

TABLE OF AUTHORITIES

Cases

DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189, 103 L. Ed. 2d 249, 109 S. Ct. 988 (1989) 11

Felder v. Casey, 487 U.S. 131, 101 L. Ed. 2d 123, 108 S. Ct. 2302 (1988) 11

Firchau v. Diamond National Corp., 345 F.2d 269 (9th Cir. 1965) 9

Foman v. V. Davis, 371 U.S. 178, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962) 9

Martinez v. California, 444 U.S. 277, 62 L. Ed. 2d 481, 100 S. Ct. 553 (1980) 8

Monell v. New York City Department of Social Services, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978) 11

Paradini v. National Tea Co., 62 F.R.D. 503 (D.C. Pa. 1974) 9

Peterson v. Teodosio, 34 Ohio St. 2d 161, 297 N.E.2d 113 (1973) 9

Schwarz v. Ohio State University, 31 Ohio St. 3d 267, 510 N.E.2d 808 (1987) 8

Spampinato v. M. Berger & Co., 176 F. Supp. 149 (E.D., N.Y. 1958) 9

Stoneking v. Bradford Area School District, 882 F.2d 720 (3rd Cir. 1989) (*cert. den.* 107 L. Ed. 2d 835, 110 S.Ct. 840, 1990) 11

Statutes

42 U.S.C. 1983 3,5

§2305.19 Ohio Revised Code 8

§2744.01, *et seq.*, Ohio Revised Code 3,4,5,10

Rules

Federal Rules of Civil Procedure Rule 8(A) 7

Federal Rules of Civil Procedure Rule 8(E)(1) 7

Federal Rules of Civil Procedure Rule 15(A) 8

Ohio Rules of Civil Procedure Rule 8(A) 6,9

Ohio Rules of Civil Procedure Rule 8(E)(1) 6,7

Ohio Rules of Civil Procedure Rule 15(A) 8

Ohio Rules of Civil Procedure Rule 41 8

No. 90-1982

IN THE

Supreme Court of the United States

October Term, 1990

MARY JONES, Mother and Guardian on Behalf of
KAREN JONES, an Incompetent, and
MARY JONES,
Petitioners,

vs.

DAYTON BOARD OF EDUCATION, MIAMI
LIBERTY CAB CO. and EDDIE SLAUGHTER,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENT DAYTON BOARD OF EDUCATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. STATEMENT OF CASE AND FACTS

On October 22, 1987, Petitioner, Mary Jones, as mother and guardian of Karen Jones, filed her complaint in the Montgomery County, Ohio Common Pleas Court against the Dayton Board of Education ("Dayton Board"), Miami Liberty Cab Company ("Miami Liberty"), and Eddie Slaughter. The complaint alleged that Karen Jones, a blind and multi-handicapped student in the Dayton Public School System, had been sexually assaulted by Eddie Slaughter, a taxicab driver, under contract with Miami Liberty, while he was transporting Karen Jones to the Ohio State School for the Blind in Columbus, Ohio, and that the Dayton Board was negligent in utilizing Miami Liberty to provide such transportation. The complaint further alleged that, as a result of the assault, Karen Jones was impregnated and gave birth to a child.

Many, if not most, of the facts concerning the incident which gave rise to this litigation are in dispute between what is stated in the Petitioners' Petition for Writ of Certiorari and Respondent's position as to the facts. For example, Respondent does not agree that (1) Karen Jones was profoundly retarded, (2) Karen Jones was under the Dayton Board's custody, control and supervision when the incident occurred, (3) the Dayton Board placed Karen Jones in the taxicab, (4) the Dayton Board engaged in any practice, custom and policy of reckless or deliberate indifference or gross negligence in regard to Karen Jones' Constitutional rights, (5) Mary Jones raised any issues concerning her daughter's safety while being transported by taxicab to the Ohio State School for the Blind, (6) the Dayton Board violated any statute in connection with the transportation of Karen Jones, (7) the Dayton Board directed the seating of

Karen Jones in the taxicab on the date of the incident, and (8) the Dayton Board had any knowledge prior to the event that the driver was a felon, alcoholic or a substance abuser. While these matters are contested, the resolution of them is not necessary in connection with the resolution of this matter by the trial court as upheld by the appellate court or for this Court to determine that this case is not entitled to a writ of certiorari.

On December 22, 1988, after the action had been pending for approximately 14 months, the Petitioners moved the trial court for leave to file an amended complaint. Leave was granted by the trial court, and the first amended complaint was filed on January 12, 1989, and in 78 paragraphs set forth six claims for relief, including claims based upon theories of violation of 42 U.S.C. §1983, assault, negligence, invasion of privacy, infliction of severe emotional distress, and loss of society and companionship. (See Petitioner's Appendix, A38.)

On January 25, 1989, the Petitioners filed a motion entitled "Exparte Motion Non [sic] Pro Tunc," etc. (See App. A5) requesting leave to amend the first amended complaint and to add new parties plaintiff. The trial court denied this motion on January 31, 1989. On February 1, 1989, the Petitioners filed another motion requesting leave to amend the First Amended Complaint. (See App. A23.)

On February 3, 1989, the trial court issued a Decision and Entry deferring decision on the motion for leave to file the second amended complaint and directed counsel for Petitioners to review their proposed amendment in light of Rules 8(A) and 8(E)(1) of the Ohio Rules of Civil Procedure. These rules state that a claim for relief shall contain "... a short and plain statement of the claim ...." and that a pleading shall be "...

simple, concise and direct . . . ." The trial court noted that the proposed second amended complaint is "replete with superfluous and unnecessary allegations, conclusions of law, and is generally so verbose as to be difficult to comprehend." (See App. A1).

On February 10, 1989, Petitioner submitted a revised proposed second amended complaint to the trial court. (See App. A39.) On March 16, 1989, the trial court issued its Entry, which stated that after review of the revised proposed second amended complaint, ". . . there has been little, if any, compliance with the decision and entry of this Court of February 3, 1989." (Petitioner's App. A26.) The court then attached its own edited version of the proposed second amended complaint and instructed Petitioners to prepare a second amended complaint in conformity to the court's instruction.

The Petitioners elected to follow the trial court's instructions, and on March 29, 1989, filed a second amended complaint. (See App. A51.) The second amended complaint as filed by the Petitioners did not raise a claim based upon 42 U.S.C. §1983 or any other federal civil rights statute.

On August 15, 1989, the Dayton Board filed a motion for summary judgment based upon the immunity from tort liability provided to political subdivisions by §2744.01, *et seq.* of the Ohio Revised Code, and on November 8, 1989, the trial court granted this motion.

Petitioners appealed the trial court's grant of summary judgment in favor of the Dayton Board to the Ohio Court of Appeals, Second Appellate District. The Appeals Court in its opinion of October 3, 1990, found that the trial court had not abused its discretion in connection with the granting of leave to file the Second

Amended Complaint. The Appeals Court upheld the grant of summary judgment in favor of the Dayton Board based upon the immunity provisions of §2744.01, *et seq.* of the Ohio Revised Code, noting that Petitioner's argument concerning federal civil rights violations was misplaced, as the second amended complaint, as filed by the Petitioner, contained only claims based upon common law tort theories and contained no claims brought under Federal law.

In its entry of March 27, 1991, the Ohio Supreme Court dismissed the appeal of Petitioner to it, and the Petitioners subsequently filed the instant petition for Writ of Certiorari to this Court.

II. SUMMARY OF ARGUMENT

The decision below properly dealt with an appropriate exercise of discretion by the trial court in permitting Petitioners (plaintiffs below) to file a second amended complaint, which did not include a claim for relief based upon 42 U.S.C. §1983 and the subsequent granting of summary judgment in favor of the Dayton Board of Education on the negligence claim which was raised in the Second Amended Complaint because of the immunity from tort liability for political subdivisions provided by Ohio Revised Code §2744.01, *et seq.* There is no issue of law present which justifies the grant of a writ of certiorari in this case.

III. ARGUMENT

This case involves a procedural quagmire created by counsel for Petitioners and has nothing to do with actions by state courts to limit Petitioners' ability to assert claims based on alleged violations of civil rights under federal law. The second amended complaint filed by the Petitioners contained no claims based on federal civil rights violations, but contained only common law claims of negligence. (See App. A51.)

The Petitioners' original complaint sounded solely in common law negligence. The Petitioners' first amended complaint added several additional claims for relief. The Petitioners next attempted to amend the first amended complaint to add new parties plaintiff. The trial court denied this motion, and the Petitioners moved for leave to file a second amended complaint. The trial court reviewed the tendered amendment and observed that it did not comply with Rules 8(A) and 8(E)(1) of the Ohio Rules of Civil Procedure concerning a short and plain statement of the claim and that the averments in the pleadings be simple, concise and direct. The trial court did not deny leave to amend, but deferred decision to give Petitioners an opportunity to file another amended pleading which was in conformity with the Ohio Civil Rules.

The Petitioners next tendered a revision of their second amended complaint, which still did not comply with Rules 8(A) and 8(E)(1) of the Ohio Rules of Civil Procedure. The trial court still did not deny leave to amend, but instead gave Petitioners another opportunity to revise their second amended complaint to conform to the Ohio Rules of Civil Procedure and attached an edited version of the amended complaint as guidance to the

Petitioners. The Petitioners then filed their second amended complaint, which did not include a civil rights claim.

The Petitioners now argue that these actions constitute the placement of burdens on the Petitioners in bringing a civil rights claim in the Ohio courts that would not have existed in the federal courts. This is simply not the case. 8(A) and 8(E)(1) of the Ohio Rules of Civil Procedure are substantially the same as 8(A) and 8(E)(1) of the Federal Rules of Civil Procedure, except that Ohio does not require the pleading to include a statement as to jurisdiction. The concept that pleadings should contain a short and plain statement of the claim are the same in the Ohio judicial system as in the Federal judicial system. Thus, there simply is no additional burden found in this case that was placed uopn the Petitioners that would not have existed had the Petitioners been in Federal court.

Petitioners could have initially filed their complaint in conformance with the Ohio Rules of Civil Procedure and raised their civil rights claims. When they requested leave to file their second amended complaint, Petitioners had three separate opportunities to file an amended complaint in compliance with the Ohio Civil Rules (initially with their motion, then in their first revision of their second amended complaint, and at the time they submitted their second amended complaint as actually filed) which could have raised their civil rights claims and complied with Rule 8. The Petitioners instead chose to file their second amended complaint which did not include a civil rights claim.

Petitioners at the time of and after filing their second amended complaint, if they were not satisfied with the form of their pleading, had alternatives

available to them. They could have, but did not, file for leave of court to file another amended complaint which would have raised their civil rights claim. They could have, but did not, voluntarily dismissed their complaint and refiled the action with a properly drafted complaint within one year of the voluntary dismissal. Rule 41 of the Ohio Rules of Civil Procedure permits a party to voluntarily dismiss without leave of court, and §2305.19 of the Ohio Revised Code permits a complaint that has been dismissed otherwise than on the merits to be refiled within one year of the voluntary dismissal. They could have, but did not, file a separate action in the state court to prosecute their civil rights claim. *Martinez v. California*, 444 U.S. 277, 62 L. Ed. 2d 481, 100 S.Ct. 553 (1980); *Schwarz v. Ohio State University*, 31 Ohio St. 3d 267, 510 N.E.2d 808 (1987). And, of course, they could have, but did not, file a separate action in the United States District Court for the Southern District of Ohio to prosecute their cause of action for alleged deprivation of civil rights.

The Petitioners, instead of following any of these alternatives, chose to file their second amended complaint, which did not include their civil rights claims. Thus, the Ohio judicial system did not place any additional burdens on Petitioners (indeed, in regard to the ability to voluntarily dismiss without court approval and to refile, the state system is more liberal than the federal system). The Petitioners' argument in this regard simply lacks merit.

The trial court under Rule 15(A) of the Ohio Rules of Civil Procedure has discretion in granting leave to amend. Again, this rule is substantially similar to Rule 15(A) of the Federal Rules of Civil Procedure. Where the pleading is tendered timely and no apparent or disclosed

reason such as undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by prior amendments, undue prejudice or futility of the amendment exist, leave to amend should be freely granted. *Foman v. V. Davis,* 371 U.S. 178, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962), *Peterson v. Teodosio,* 34 Ohio St. 2d 161, 297 N.E.2d 113 (1973).

However, in the instant case, there were significant reasons expressed by the trial court in not automatically granting leave to file the second amended complaint. The trial court stated in its Decision and Entry of February 3, 1989, that the proposed amendment did not conform to the requirements of short, plain statements and contained superfluous and unnecessary allegations, conclusions of law, and was verbose to the point of being difficult to comprehend. The court in granting Petitioners the opportunity to file a revised amended complaint, clearly stated "If the pleading is in proper form, leave to file it will be promptly granted." (See App. A1.) The reasoning of the trial court in this regard was reviewed by the Ohio Court of Appeals for the Second District and was found not to be an abuse of discretion. It is not unique for a court to condition leave to file an amended complaint upon compliance with conditions. See, *Firchau v. Diamond National Corp.,* 345 F.2d 269 (9th Cir. 1965) (conditioning amendment upon plaintiff's compensating defendants for the party's failure to file an adequate pleading in the first instance); *Parandini v. National Tea Co.,* 62 F.R.D. 503 (D.C. Pa. 1974) (conditioning amendment to add conspiracy to violate civil rights claim upon waiving relation back for statute of limitation purposes); *Spampinato v. M. Berger & Co.,* 176 F. Supp. 149 (E.D., N.Y. 1958) (leave to amend conditioned upon deleting 34 paragraphs from the

amended pleading as being superfluous). It is not even arguably an abuse of discretion for the trial court to require, as it did here, that the amended complaint comply with the relatively simple burden of being intelligible and in proper form.

Petitioners' second amended complaint did not include a claim for relief based upon alleged violations of civil rights, and therefore, the Ohio Appeals Court for the Second Appellate District upheld the grant of summary judgment in favor of the Dayton Board based upon the immunity provisions of Section 2744.01, *et seq.* of the Ohio Revised Code.

IV. PETITIONERS' AUTHORITY DISTINGUISHED

Petitioners rely principally upon *DeShaney v. Winnebago County Department of Social Services,* 489 U.S. 189, 103 L. Ed. 2d, 109 S. Ct. 998 (1989), and *Stoneking v. Bradford Area School District,* 882 F.2d 720 (3rd Cir. 1989) (*cert. den.* 107 L. Ed. 2d 835, 110 S. Ct. 840, 1990). These cases are clearly not applicable to the instant facts. In both, unlike here, a civil rights claim was properly pleaded before the court. *DeShaney,* however, provides positive support for the proposition that had a civil rights claim been before the trial court, the trial court could have properly found such claim to be without merit. This Court held in *DeShaney* that as a general matter, a state's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause. In the instant case, it was clearly established that Slaughter, the alleged attacker, was not an employee of the Dayton Board. *Monell v. New York City Department of Social Services,* 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978) establishes the fact that supervisory liability cannot be the basis for civil rights liability of the governmental unit, but rather such a claim must be based upon custom, practice, usage, or policy, if any such claim is to be found to exist at all. In the instant case, no such policy, etc. was pled, nor did any of the information before the trial court at the time of its grant of summary judgment raise a genuine issue of fact as to the possible existence of such a policy, etc. Thus, Petitioners' reliance on *DeShaney* is misplaced.

Stoneking, supra, is inapposite. *Stoneking* dealt with abuse of school children by an employee of the school district, not the situation present in this case, and further involved allegations of a pattern of abuse and the

failure of specific administrative employees to take any action to deal with these situations. In the present case, it was clear that Slaughter was not an employee of the Dayton Board.

Finally, Petitioners rely on *Felder v. Casey*, 487 U.S. 131, 101 L. Ed. 2d 123, 108 S. Ct. 2302 (1988). This case held that the Supremacy Clause pre-empts state statutory limitations which placed additional burdens upon litigants seeking redress in state courts for civil rights claims over and beyond those established for Federal Courts. As a matter of law, this is a correct statement. But, this was recognized by the Ohio Court of Appeals for the Second Appellate District when it reviewed this case. The Appeals Court correctly pointed out that at the time of the granting of the summary judgment motion, there simply were no federal civil rights claims before the trial court. Thus, this case does not deal with the issue of some state statute placing an additional burden on the Petitioners, but with a second amended complaint that failed to raise a civil rights claim.

CONCLUSION

This case presents no issue of the State of Ohio placing any burden on the Petitioners in bringing a federal civil rights claim in state court that would not also exist in the Federal system. This case does present a situation in which Petitioners failed to allege a civil rights claim for relief and in which summary judgment was properly granted to the Dayton Board by the trial court on the common law negligence claim that was advanced by the Petitioners.

Since there is no question of Constitutional or federal law presented by this case, it is respectfully submitted that the Petitioners have failed to sustain their burden of establishing that there are sufficient reasons to grant the writ of certiorari in this case.

Respectfully submitted,

HOWARD P. KRISHER
Counsel of Record
BIESER, GREER & LANDIS, of Counsel
400 Gem Plaza, Third and Main Streets
Dayton, Ohio 45402-1908
(513) 223-3277
Attorneys for Respondent
Dayton Board of Education

Of Counsel:
JOHN F. LENEHAN
DWIGHT A. WASHINGTON
348 West First Street
Dayton, Ohio 45402
(513) 461-3091

APPENDIX

DECISION AND ENTRY OF THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

(Filed February 3, 1989)

Case No. 87-3339

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO GENERAL DIVISION

MARY JONES, *et al.*,
Plaintiffs,

v.

DAYTON BOARD OF EDUCATION, *et al.*,
Defendants.

DECISION AND ENTRY

(Deferring Ruling on Plaintiffs' Motion for Leave to Amend the First Amended Complaint)

(Judge Robert M. Brown)

This cause is before the Court on the motion of the Plaintiffs, through counsel, filed herein on February 1, 1989, seeking an order of this Court granting them leave to file a second amended complaint. The motion is supported by a memorandum to which a draft of a second amended complaint is attached. This action was commenced by the filing of a complaint on October 22,

1987. On December 22, 1988, counsel for Plaintiffs sought leave to file a first amended complaint, which was granted. Another motion to amend the complaint was filed on January 31, 1989, and now on February 1, 1989, another motion to amend the complaint has been filed.

To indicate that this case has suffered a tortuous course of procedure to this point in time is to minimize the fact. While some of the problems are not of the Plaintiffs' doing, many of them are. The amendments now sought to the complaint should never have been required had the complaint been properly drafted in the first instant, and certainly not after a delay of sixteen months. While Civil Rule 15(A) requires that leave to amend be liberally given, the Court has too many other matters [2] requiring attention to be involved in this detail, this frequently, as well as the large demand on the Court's time with regard to discovery problems.

Before granting further leave to amend the complaint, the Court is requiring that counsel for Plaintiffs review and carefully consider the provisions of Civil Rule 8(A), which requires in part that a pleading set forth a claim for relief and shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Counsel shall also read and consider Civil Rule 8(E)(1) which provides that each allegation in "a pleading shall be simple, concise, and direct." Finally, in this connection, counsel's attention is drawn to the appendix of forms attached to the Civil Rules to observe and study examples of proper pleading under the rules.

The tendered second amended complaint is replete with superfluous and unnecessary allegations, conclusions of law, and is generally so verbose as to be difficult to comprehend.

After doing all the foregoing, counsel for Plaintiffs may then tender a proposed second amended complaint to the Court, at which time the Court, after carefully reviewing the proposed pleading, will determine if the Court's instructions have been followed. If the pleading is in proper form, leave to file it will be promptly granted.

As indicated above, questions involving discovery have involved an inordinate amount of time from the Court. Counsel's attention is drawn to the provisions of Rule 2.19 of this court. [3] That rule outlines in some detail the conduct which this Court expects of counsel in conducting discovery. Counsel are also directed to review Civil Rules 26 through 37 with respect to the various means of discovery and shall conduct the discovery consistent with those rules. In any event, it is ORDERED that all discovery in this action cease and desist until a second amended complaint is filed, after leave of Court as above indicated. As soon as that is accomplished, counsel may then proceed with discovery in an orderly fashion in compliance with the Civil Rules and the Local Rule.

Copies of the within Decision and Entry shall be mailed by ordinary mail on the date of filing to counsel listed below.

A P P R O V E D :

/s/ ROBERT M. BROWN, *Judge*

ALVARENE N. OWENS, Attorney for Plaintiffs, 1101 Salem Avenue, Dayton, Ohio 45406 275-6842

NWABUEZE V. OKOCHA, Attorney for Plaintiffs, 650 Rockefeller Building, 614 Superior Avenue, N.W., Cleveland, Ohio 44113 216-574-9400

HOWARD P. KRISHER, Attorney for Defendant, Dayton Board of Education, 400 Gem Plaza, Third and Main Streets, Dayton, Ohio 45402 223-3277

GREGORY T. SCOTT, Attorney for Defendant, Eddie Slaughter, 860 Talbott Tower, Dayton, Ohio 45402 461-9331

JOHN P. PETZOLD, Attorney for Defendant, Miami Liberty Cab Co., 900 Talbott Tower, Dayton, Ohio 45402 223-1201

ROBIN R. FREEMAN, Attorney for Defendant, Miami Liberty Cab Co., 203 BancOhio Building, Springfield, Ohio 45502 324-5541

JACK D. REAY, Bailiff

A5

EXPARTE MOTION NON PRO TUNC PERMITTING AMENDMENT TO PLAINTIFFS' FIRST AMENDED COMPLAINT'S CAPTION TO CONFORM TO THE COMPLAINT'S ALLEGATIONS

Case No. 87-3339

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO

MARY JONES, *et al.*,
Plaintiffs,

vs.

DAYTON BOARD OF EDUCATION, *et al.*,
Defendants.

Now comes Plaintiffs, Mary Jones as Mother and Guardian on behalf of Karen Jones, an incompetent, Mary Jones, Next of Friend and Guardian on behalf of Sally Jones, a minor and Mary Jones, and appearing before the Court exparte moves the Court for leave to amend its First Amended Complaint non pro tunc as of January 12, 1989, the date of the filing of the First Amended Complaint by the Court, for the reasons as set

forth in the Memorandum which follows and pursuant to Plaintiffs' proposed First Amended Complaint (see attached Exhibit "A," incorporated by reference herein).

Respectfully submitted,

/s/ ALVARENE N. OWENS
ALVARENE N. OWENS CO., L.P.A.
1101 Salem Avenue
Dayton, Ohio 45406
(513) 275-6842

/s/ NWABUEZE OKOCHA
OKOCHA & ASSOCIATES CO., L.P.A.
650 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113
(216) 574-9400

MEMORANDUM

Due to clerical error in the typing of the proposed Amended Complaint and inadvertence in the preparation of the Motion which contained it as Plaintiff's EXHIBIT "A," PLAINTIFF'S FIRST AMENDED COMPLAINT fully set forth and outlined the additional parties and their theories in the seventy-eight (78) allegations in the body of the Amended Complaint, but *did not* set forth the additional parties in the Amended Complaint's *caption*. To set forth the parties in the caption was clearly one of the main purposes of the amendment, along with setting forth the parties' attendant allegations. The fact the Complaint did set out the allegations and not the parties is yet other apparent evidence of Plaintiffs' obvious inadvertence. Perhaps the clerical presumption of boiler-plate case caption in spite of instructions otherwise can be appreciated in the flurry of this case's pleadings which have only begun.

Through inadvertence and excusable neglect the case caption read:

> MARY JONES,
> Mother and Guardian
> on behalf of
> Karen Jones, an incompetent
> 2818 Jerome
> Dayton, Ohio 45408

When in truth and in conformity with the allegations set forth in the Amended Complaint's allegations 1 through 78, the caption should have read:

> MARY JONES, As Mother
> and Guardian on behalf
> of Karen Jones, an incompetent
> 336 Brookside Drive
> Dayton, Ohio 45406

MARY JONES, Next of Friend
and Guardian on behalf of
Sally Jones, a minor
336 Brookside Drive
Dayton, Ohio 45406

and

MARY JONES
336 Brookside Drive
Dayton, Ohio 45406

Plaintiffs submit that for the aforegoing reasons, good cause has been shown to so amend to reflect the applicable case caption. In addition, Plaintiff refers the Court to its previous arguments in its previously submitted Motion to Amend which cites Civil Rule 15(A) which states that leave [to amend] shall be fully given when justice so requires. Certainly in regards to the additional parties Sally Jones, the sixteen (16) month old minor child of Defendant's rape and in regards to Mary Jones, her grandmother [who suffered the loss of consortium of Plaintiff, Karen, her daughter and Sally's mother], said justice requisite is met.

Also, as with Plaintiff's previously filed Motion to Amend, Plaintiffs submit that Defendants are in no way prejudiced by the filing of the subject Complaint in that the Amended Complaint set forth each of the parties and the specific legal theory upon which of their allegations was based. Defendants are not "caught" by surprise because the parties and allegations were there in the Complaint upon which the Court entered its Judgment granting Plaintiffs' leave to so amend.

Therefore, it is hereby moved that the Court amend the Complaint to so state or that in the alternative either the Court file the attached Second Amended Complaint

which so states or that Plaintiffs be allowed to file said Second Amended Complaint which so states.

Moreover, Plaintiffs submit that in light of the present exparte proceedings, should Defendants object, they may do so at some future date and thereby allow Plaintiffs to proceed forthwith upon the full merits of the case, again the intent of the Amended Complaint.

/s/ ALVARENE N. OWENS
NWABUEZE V. OKOCHA
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon John Lenehan, 348 W. First Street, Dayton, Ohio 45402; Howard Krisher, 400 Gem Plaza, Third and Main Streets, Dayton, Ohio 45402; John Petzold, 900 Talbott Tower, Dayton, Ohio 45402; and Gregory Scott, 860 Talbott Tower, Dayton, Ohio 45402 on this 25th day of January, 1989 by hand delivery.

/s/ *ALVARENE N. OWENS*
NWABUEZE OKOCHA
Attorneys for Plaintiffs

EXHIBIT A

Case No. 87-3339

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

MARY JONES, as Mother and
Guardian on behalf of
Karen Jones, an incompetent
336 Brookside Drive
Dayton, Ohio 45406,

MARY JONES, Next Friend and
Guardian on behalf of Sally
Jones, a minor
336 Brookside Drive
Dayton, Ohio 45406,

MARY JONES
336 Brookside Drive
Dayton, Ohio 45406,
Plaintiffs,

vs.

DAYTON BOARD OF EDUCATION
JOHN LENEHAN
Legal Counsel
348 W. First Street
Dayton, Ohio 45402,

MIAMI LIBERTY CAB CO.
FRANK M. ROOT
Statutory Agent
1406 Third National Building
Dayton, Ohio 45402,

and

EDDIE SLAUGHTER
4821 Liberty Road
Dayton, Ohio 45418,
Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL

Now comes the Plaintiffs, Mary Jones and Karen Jones, a minor by and through her next friend, mother and guardian, Mary Jones, and for her First Amended Complaint aver as follows:

1. Plaintiff, Karen Jones, is a handicapped individual pursuant to state and federal law, an incompetent and a minor residing in Dayton, Ohio.

2. Plaintiff, Mary Jones, is the mother, next friend and guardian of Plaintiff, Karen Jones, and a resident of Dayton, Ohio.

3. Defendant, Dayton Board of Education (hereinafter "DBOE") is a political subdivision of the State of Ohio and is charged with the government of the Dayton Public Schools (hereinafter "DPS"), pursuant to the provisions of Title 33 of Ohio Revised Code.

4. Defendant, Miami-Liberty Cab Co., is at all times relevant hereto, a taxicab company, engaged in the transportation of persons or property, and organized under the laws of the State of Ohio with its principal place of business located in the City of Dayton, County of Montgomery, State of Ohio.

5. Defendant, Eddie Slaughter, is at all times relevant hereto, a resident of the City of Dayton, and an employee or agent of Defendant, Miami-Liberty Cab Co.

6. At all times relevant hereto, all of the Defendants acted under color of state law.

7. At all times relevant hereto, all of the Defendants were aware of the peculiar susceptibility and vulnerability of Plaintiff, Karen Jones.

8. Defendant DBOE has a statutory duty to provide education to students within its jurisdiction, including but not limited to, providing transportation necessary for the education of students.

9. Plaintiff, Karen Jones, was identified by the DPS as an emotionally disturbed child by the time she entered the school system.

10. DPS also identified Plaintiff, Karen Jones, as a mentally retarded and blind.

11. Based on evaluations and tests administered by the DPS, Plaintiff, Karen Jones, was placed in an educational institution for the blind and for emotionally disturbed children consistent with the Defendant DBOE's statutory responsibility.

12. Plaintiff, Karen Jones, is entitled to instruction from the DPS pursuant to the Education of the Handicapped Act (hereinafter "EHA"), 20 U.S.C. Sections 1412(1), 1413(a) and pursuant to state law.

13. The EHA requires DPS to ensure an "free appropriate education" for all disabled children within its jurisdiction.

14. Defendant DBOE contracted the Ohio State School for the Blind, Columbus, Ohio for placement of Karen Jones.

15. DPS designed Plaintiff Karen Jones' educational plan.

16. Subsequently, Defendant DBOE entered into an agreement with the Ohio State School for the Blind consistent with its education plan for Plaintiff, Karen Jones.

17. Transportation is essential for the education of Plaintiff, Karen Jones, in the Ohio State School for the Blind.

18. In compliance with its statutory duty, Defendant DBOE arranged for the transportation of Plaintiff, Karen Jones, to the Ohio State School for the Blind, with Defendant, Miami-Liberty Cab Co.

19. Defendant DBOE employed Defendant Miami Liberty Cab Co. to transport its students, including but not limited to blind and retarded students, such as Plaintiff, Karen Jones, to schools.

20. At all times relevant hereto, Defendant Slaughter was acting as an employee or agent of the Defendant Miami Liberty Cab Co.

21. At all times relevant hereto, Defendant Miami-Liberty Cab Co. held out and/or represented to the public, including the Defendant DBOE and the Plaintiff, that it is a taxicab company or a common carrier, engaged in the business of transportation of persons or property for compensation.

22. Defendant DBOE authorized Defendant Miami-Liberty Cab Co. to transport Plaintiff, Karen Jones.

23. Defendant, DBOE bore an affirmative obligation to provide adequate transportation and for the safety of Plaintiff Karen Jones.

24. Defendant Miami-Liberty Cab Co. voluntarily assumed these obligations by contract.

25. As a result of the contract, Defendant DBOE delegated its function of transporting its students, such as Plaintiff, Karen Jones, to Defendant Miami-Liberty Cab Co.

26. Over a period of several years, Defendant Miami-Liberty Cab Co. transported Plaintiff, Karen Jones, from Dayton, Ohio to the Ohio State School for the Blind, Columbus, Ohio, and vice versa.

27. Defendant Miami-Liberty Cab Co. received over five thousand (5,000.00) dollars per annum from Defendant DBOE as compensation for transportation of Defendant DBOE's students.

28. At all times relevant hereto, Defendant Miami-Liberty Cab Co. held out and/or represented to the public, including the Defendant DBOE and the Plaintiffs, that Defendant Slaughter was acting as its employee or agent.

29. Plaintiffs and Defendant DBOE reasonably believed that Defendant Slaughter was acting as an employee or agent of the Defendant Miami-Liberty Cab Co.

30. Defendant, DBOE and Plaintiffs relied on the aforestated representations to their own detriment.

31. On November 16, 1986, Plaintiff, Karen Jones, was transported in Defendant Miami-Liberty Cab Co.'s vehicles from Dayton, Ohio to Columbus, Ohio.

32. Defendant DBOE paid for the transportation of Plaintiff, Karen Jones, by Defendant Miami-Liberty Cab Co. to the Ohio State School for the Blind.

33. Defendants Miami-Liberty Cab Co. and DBOE were deliberately indifferent to the safety and care of Plaintiff Karen Jones by failing to protect her.

34. Defendants breached their special relationship with Plaintiff Karen Jones by failing to protect her.

35. On November 16, 1986, Plaintiff Karen Jones was transported in Defendant Miami-Liberty Cab Co.'s vehicle.

36. Defendant Slaughter was the driver of Defendant Miami-Liberty Cab Co.'s vehicle that transported Plaintiff Karen Jones.

37. On November 16, 1986, in the course of Defendant Miami-Liberty Cab Co.'s transporting Plaintiff Karen Jones from Dayton to Columbus in accordance with its contract with Defendant DBOE, Defendant Slaughter sexually molested and maliciously and unlawfully assaulted and committed acts of gross sexual imposition upon Plaintiff Karen Jones by unlawfully and violently engaging in sexual intercourse with Plaintiff Karen Jones.

38. Defendant Slaughter sexually molested and abused Plaintiff Karen Jones.

39. Defendant Slaughter's conduct was outrageous, malicious, wanton and oppressive.

40. Defendant Miami-Liberty Cab Co. knew or should have known about the dangerous propensities of Defendant Slaughter.

41. As a direct and proximate result of the sexual assault and abuse of Plaintiff Karen Jones, Plaintiffs have suffered and continue to suffer extreme pain, physical harm, shock, mental anguish, and emotional distress.

42. Contrary to the provisions R.C. Section 3313.20, Plaintiff Karen Jones states that she has received no benefits as a result of said sexual abuse and the ensuing treatment.

43. As a direct and proximate result of Defendant Slaughter's unlawful sexual intercourse, Plaintiff Karen Jones conceived and became pregnant.

44. On August 9, 1987, Plaintiff Karen Jones gave birth to a baby girl, Sally Jones.

45. Defendant Slaughter is the natural and biological father of Sally Jones.

46. As a direct and proximate result of Defendants' acts, Plaintiff Karen Jones has been severely and permanently injured in that she conceived and bore a child for which provision for care must be had and for which Plaintiff Karen Jones is incompetent and unable to provide for Sally Jones' child care, necessities, medical, educational and recreational expenses until Sally Jones reaches majority.

47. The Defendants maliciously and wantonly interfered and disrupted Plaintiff Karen Jones' education. This punishment is cruel, arbitrary, and in violation of state and federal law and the civil and constitutional rights of the Plaintiff Karen Jones.

48. As a direct and proximate result of Defendants' reckless, wanton, willful, malicious and oppressive acts, Plaintiffs have suffered great humiliation, shame, embarrassment and emotional distress.

49. Plaintiffs have suffered severe mental and emotional distress such that Plaintiff Karen Jones is afraid to attend school.

50. As a proximate result of Defendants' acts Plaintiffs have incurred medical expenses and will further incur such related medical expenses.

51. Defendant Miami-Liberty Cab Co. undertook to provide transportation for Plaintiff Karen Jones.

52. Defendant Miami-Liberty Cab Co. had a duty to exercise reasonable care for the safety of Plaintiff Karen Jones.

53. Defendant Miami-Liberty Cab Co. breached its duty of care to Plaintiff Karen Jones by hiring or retaining unqualified or irresponsible employees and personnel; by failing to establish or to enforce policies and procedures necessary to insure the safety of Plaintiff Karen Jones by failing to monitor the quality of care being provided to its passengers.

54. As a direct and proximate result of Defendant Miami-Liberty Cab Co.'s breach of its duty of care, Plaintiffs were injured.

55. Defendant DBOE undertook to provide transportation for Plaintiff Karen Jones.

56. Defendant DBOE had a duty to exercise due skill and care in selecting, hiring, firing and retaining responsible employees and services, but failed to establish or to enforce policies and procedures necessary to insure the safety of Plaintiff Karen Jones and failed to monitor the quality of care being provided to its students.

57. Defendant DBOE breached this duty of care by failing to select a responsible company and in failing to insure the safety and protection of Plaintiff Karen Jones.

58. As a direct and proximate result of Defendant DBOE's breach of its duty of care, Plaintiffs were injured.

59. Defendants DBOE and Miami-Liberty Cab Co. are responsible for selecting, hiring, firing, instructing, training, supervising and controlling all their employees, and for setting all of their policies for such. They also

have a duty to protect and maintain a safe, violent-free environment for the students under their custody and supervision. They have knowingly failed to exercise their responsibilities in such a way so as to avoid and control the practices described in paragraphs 1 through 8 of this First Amended Complaint.

60. Defendants DBOE and Miami-Liberty Cab Co. have knowledge of the denial of education, humiliation, degradation, sexual abuse, excessive physical force and inhumane treatment of its students. They have not taken steps to correct these practices, but have acquiesced in or condoned them.

61. The injuries and threatened future injuries to Plaintiffs, and to the other children in the DPS, are proximately caused by the actions and nonfeasance of Defendants DBOE and Miami-Liberty Cab Co. Defendants DBOE and Miami-Liberty Cab Co. have acted deliberately and with gross and reckless negligence, and have displayed deliberate indifference to the needs of Plaintiffs.

62. Defendants follow and have followed at all times relevant hereto, a pattern or practice of inflicting arbitrary and capricious acts on Plaintiff.

63. The denial of adequate education to Plaintiff Karen Jones, deprives her of her rights under the Eighth and Fourteenth Amendments to the United States Constitution, causing Plaintiffs irreparable injury.

64. The infliction of arbitrary, inhumane treatment and sexual molestation and abuse of Plaintiff Karen Jones and the interference and disruption of her education and family life constitutes cruel and unusual punishment and deprives Plaintiffs of their rights under

the Eighth and Fourteenth Amendments to the United States Constitution, causing them irreparable injury pursuant to 42 U.S.C. Section 1983.

65. As a direct and proximate result of Defendants' actions, Plaintiff have suffered physical harm, stigmatization, mental and emotional distress, humiliation, grief, anxiety, indignity, terror, and other damages to be adduced at trial.

FIRST CLAIM

66. Plaintiffs reallege and incorporate by reference paragraphs 1 through 65 of the First Amended Complaint as if fully rewritten herein.

67. Defendants maintained a course of conduct and practice that violated Plaintiffs' civil and constitutional rights, proximately causing them injury, pursuant to 42 U.S.C. Section 1983.

SECOND CLAIM

68. Plaintiffs reallege and incorporate by reference paragraphs 1 through 67 of the First Amended Complaint as if fully rewritten herein.

69. Defendant Slaughter tortiously assaulted Plaintiff Karen Jones, proximately causing her injury.

THIRD CLAIM

70. Plaintiffs reallege and incorporate by reference paragraphs 1 through 69 of the First Amended Complaint as if fully rewritten herein.

71. Defendants DBOE and Miami-Liberty Cab Co., by failing to establish and enforce rules of conduct for their employees, by acquiescing in and condoning the

patterns and practices of their employees, by failing to protect Plaintiff Karen Jones and to insure her safety, and by failing to exercise in a proper manner their power to select, hire, fire, train, supervise and control their employees, have through gross negligence breached a duty owed to Plaintiffs, proximately causing them injury.

FOURTH CLAIM

72. Plaintiffs reallege and incorporate by reference paragraphs 1 through 71 of the First Amended Complaint as if fully rewritten herein.

73. The Defendants' actions were wanton and willful and constitute invasion of privacy.

FIFTH CLAIM

74. Plaintiffs reallege and incorporate by reference paragraphs 1 through 73 of the First Amended Complaint as if fully rewritten herein.

75. Defendants' actions were intentionally and maliciously designed and executed so as to cause Plaintiffs to suffer severe emotional and mental distress.

76. Plaintiffs have suffered and will continue to suffer extreme hardship, severe mental and emotional distress, anguish, anxiety, humiliation, embarrassment and actual impending irreparable damage in that they will be further harassed, coerced, intimidated and stigmatized, as well as deprived of their right to education.

SIXTH CLAIM

77. Plaintiffs reallege and incorporate by reference paragraphs 1 through 76 of the First Amended Complaint as if fully rewritten herein.

78. As a direct and proximate result of Defendants' actions, Plaintiff Mary Jones has suffered a loss of her daughter's society and compansionship.

SEVENTH CLAIM

79. Plaintiffs reallege and incorporate by reference paragraphs 1 through 76 of the First Amended Complaint as if fully rewritten herein.

80. As a direct and proximate result of Defendants' actions, Plaintiff, Sally Jones, has suffered a loss of her mother, Karen Jones', society and companionship.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this honorable Court grant the following relief:

1. Award damages against Defendants joint and severally;

2. Award Plaintiffs compensatory damages against Defendants in the amount of $1,520,000.00 as per prayer for relief No. 1;

3. Award Plaintiffs punitive damages against Defendants in the amount of $1,500,000.00 as per prayer for relief No. 1;

4. Enter preliminary and permanent injunctions against Defendants, their agents, employees and assigns to: (a) Exercise their duties to select, hire, fire, train, supervise and control Dayton Public Schools' policy so as to eliminate sexual molestation and abuse and the interference and disruption of children's education, such as Plaintiff Karen Jones; (b) Provide adequate education for children; and (c) Provide safe transportation of children without violence;

5. Award Plaintiffs their costs and expenses of this action, including reasonable attorney's fees pursuant to 42 U.S.C. Section 1988 as per prayer for relief No. 1;

6. Demand for a jury trial pursuant to Civil Rule 38; and,

7. Award any other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ ALVARENE N. OWENS
ALVARENE N. OWENS CO., L.P.A.
1101 Salem Avenue
Dayton, Ohio 45406
(513) 275-6842

/s/ NWABUEZE V. OKOCHA
OKOCHA & ASSOCIATES CO., L.P.A.
650 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113
(216) 574-9400

Attorneys for Plaintiffs

PLAINTIFFS' SECOND MOTION TO AMEND ITS FIRST AMENDED COMPLAINT TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Case No. 87-3339
(Judge Brown)

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO

MARY JONES, *et al.*,
Plaintiffs,

vs.

DAYTON BOARD OF EDUCATION, *et al.*,
Defendants.

Now come Plaintiffs, Mary Jones, as Mother and Guardian on behalf of Karen Jones, an incompetent, Mary Jones, as Next Friend and Guardian on behalf of Sally Jones, a minor, and Mary Jones come before the Court by and through counsel, Alvarene N. Owens and Nwabueze Okocha, and move the Court to amend Plaintiffs' First Amended Complaint to Plaintiffs' SECOND AMENDED COMPLAINT for the reasons as set forth in the Memorandum which follows.

Respectfully submitted,

/s/ ALVARENE N. OWENS
ALVARENE N. OWENS CO., L.P.A.
1101 Salem Avenue
Dayton, Ohio 45406
(513) 275-6842

/s/ NWABUEZE OKOCHA
OKOCHA & ASSOCIATES CO., L.P.A.
650 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113
(216) 574-9400
Attorneys for Plaintiffs

MEMORANDUM

Plaintiffs' counsel filed Plaintiffs' Motion to Amend and its attached proposed Plaintiffs' First Amended Complaint outlining Plaintiffs' theories and parties in the Complaint's body of allegations, but not reflecting the same parties in the Amended Complaint's *caption* was error and inadvertence. The error is clerical boiler-plating of the original Complaint and subsequent pleadings' caption along with oversight by counsel at the point in time of its submission with the Motion.

The First Amended Complaint's pertinent allegations containing the additional theories, *and* additional parties, began at the First Claim and allegation 66 and continues on to the end of the Amended Complaint at the Seventh Claim and allegation 80. In each, "Plaintiffs" are alleged, incorporating subsequent allegations along with further constitutional and tortious acts of Defendants.

Specifically at allegation 78 it states in part:

> ". . . Plaintiff Mary Jones has suffered a loss of her daughter's society and companionship."

All of the above Plaintiffs referred to in the body of the allegations are evidence of Plaintiffs' original intent and of counsel's inadvertence.

Plaintiffs now submit that the caption reflect the controlling allegations. Certainly, the present Motion specifically sets forth both allegations and parties as should have been done in the first instance (see attached Exhibit A, Plaintiffs' proposed Plaintiffs' SECOND AMENDED COMPLAINT, incorporated by reference herein).

And finally, in the interest of procedural efficiency, Plaintiffs simultaneously propose the Seventh Claim and allegations 79 and 80 contained therein as an additional

theory in Plaintiffs' SECOND AMENDED COMPLAINT in regards to the minor child, Sally Jones', loss of her mother, incompetent Karen Jones', society and compansionship.

At this juncture, Plaintiffs will again refer the Court to the non prejudicial effect on Defendants and the language of Rule 16 that leave be freely given.

Respectfully submitted,

/s/ ALVARENE N. OWENS
NWABUEZE OKOCHA
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon Howard Krisher, 400 Gem Plaza, Third and Main Streets, Dayton, Ohio 45402; John Petzold, 900 Talbott Tower, Dayton, Ohio 45402; Gregory Scott, 860 Talbott Tower, Dayton, Ohio 45402; John Lenehan, 348 W. First Street, Dayton, Ohio 45402; and Robin Freeman, P.O. Box 1488, 2nd Floor, BancOhio Building, Springfield, Ohio 45501 on this 1st day of February, 1989 by hand delivery.

/s/ ALVARENE N. OWENS
NWABUEZE OKOCHA
Attorneys for Plaintiffs

EXHIBIT A

Case No. 87-3339

(Judge Brown)

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

MARY JONES, as Mother and
Guardian on behalf of
Karen Jones, an incompetent
336 Brookside Drive
Dayton, Ohio 45406

MARY JONES, as Next Friend and
Guardian on behalf of Sally
Jones, a minor
336 Brookside Drive
Dayton, Ohio 45406

MARY JONES
336 Brookside Drive
Dayton, Ohio 45406,
Plaintiffs,

vs.

DAYTON BOARD OF EDUCATION
348 W. First Street
Dayton, Ohio 45402

MIAMI LIBERTY CAB CO.
1406 Third National Building
Dayton, Ohio 45402

and

EDDIE SLAUGHTER
4821 Liberty Road
Dayton, Ohio 45418,
Defendants.

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Now come the Plaintiffs, Mary Jones, and Karen Jones and Sally Jones, minors, by and through their next friend, mother and guardian, Mary Jones, and for their Second Amended Complaint aver as follows:

1. Plaintiff, Karen Jones, is a handicapped individual pursuant to state and federal law, an incompetent and a minor residing in Dayton, Ohio.

2. Plaintiff, Mary Jones, is the mother, next friend and guardian of Plaintiff, Karen Jones, and a resident of Dayton, Ohio.

3. Defendant, Dayton Board of Education (hereinafter "DBOE") is a political subdivision of the State of Ohio and is charged with the government of the Dayton Public Schools (hereinafter "DPS"), pursuant to the provisions of Title 33 of Ohio Revised Code.

4. Defendant, Miami-Liberty Cab Co., is at all times relevant hereto, a taxicab company, engaged in the transportation of persons or property, and organized under the laws of the State of Ohio with its principal place of business located in the City of Dayton, County of Montgomery, State of Ohio.

5. Defendant, Eddie Slaughter, is at all times relevant hereto, a resident of the City of Dayton, and an employee or agent of Defendant, Miami-Liberty Cab Co.

6. At all times relevant hereto, all of the Defendants acted under color of state law.

7. At all times relevant hereto, all of the Defendants were aware of the peculiar susceptibility and vulnerability of Plaintiff, Karen Jones.

8. Defendant DBOE has a statutory duty to provide education to students within its jurisdiction, including but not limited to, provided transportation necessary for the education of students.

9. Plaintiff, Karen Jones, was identified by the DPS as an emotionally disturbed child by the time she entered the school system.

10. DPS also identified Plaintiff, Karen Jones, as a mentally retarded and blind.

11. Based on evaluations and tests administered by the DPS, Plaintiff Karen Jones, was placed in an educational institution for the blind and for emotionally disturbed children consistent with the Defendant DBOE's statutory responsibility.

12. Plaintiff, Karen Jones, is entitled to instruction from the DPS pursuant to the Education of the Handicapped Act (hereinafter "EHA"), 20 U.S.C. Sections 1412(1), 1413(a) and pursuant to state law.

13. The EHA requires DPS to ensure a "free appropriate education" for all disabled children within its jurisdiction.

14. Defendant DBOE contacted the Ohio State School for the Blind, Columbus, Ohio for placement of Karen Jones.

15. DPS designed Plaintiff Karen Jones' educational plan.

16. Subsequently, Defendant DBOE entered into an agreement with the Ohio State School for the Blind consistent with its education plan for Plaintiff, Karen Jones.

17. Transportation is essential for the education of Plaintiff, Karen Jones, in the Ohio State School for the Blind.

18. In compliance with its statutory duty, Defendant DBOE arranged for the transportation of Plaintiff, Karen Jones, to the Ohio State School for the Blind, with Defendant, Miami-Liberty Cab Co.

19. Defendant DBOE employed Defendant Miami Liberty Cab Co. to transport its students, including but not limited to blind and retarded students, such as Plaintiff, Karen Jones, to schools.

20. At all times relevant hereto, Defendant Slaughter was acting as an employee or agent of the Defendant Miami-Liberty Cab Co.

21. At all times relevant hereto, Defendant Miami-Liberty Cab Co. held out and/or represented to the public, including the Defendant DBOE and the Plaintiffs, that it is a taxicab company and/or a common carrier, engaged in the business of transportation of persons or property for compensation.

22. Defendant DBOE authorized Defendant Miami-Liberty Cab Co. to transport Plaintiff, Karen Jones.

23. Defendant DBOE bore an affirmative obligation to provide adequate transportation and for the safety of Plaintiff Karen Jones.

24. Defendant Miami-Liberty Cab Co. voluntarily assumed these obligations by contract.

25. As a result of the contract, Defendant DBOE delegated its function of transporting its students, such as Plaintiff, Karen Jones, to Defendant Miami-Liberty Cab Co.

26. Over a period of several years, Defendant Miami-Liberty Cab Co. transported Plaintiff, Karen Jones, from Dayton, Ohio, to the Ohio State School for the Blind, Columbus, Ohio, and vice versa.

27. Defendant Miami-Liberty Cab Co. received over five thousand (5,000.00) dollars per annum from Defendant DBOE as compensation for transportation of Defendant DBOE's students.

28. At all times relevant hereto, Defendant Miami-Liberty Cab Co. held out and/or represented to the public, including the Defendant DBOE and the Plaintiffs, that Defendant Slaughter was acting as its employee or agent.

29. Plaintiffs and Defendant DBOE reasonably believed that Defendant Slaughter was acting as an employee or agent of the Defendant Miami-Liberty Cab Co.

30. Defendant, DBOE and Plaintiffs relied on the aforestated representations to their own detriment.

31. On November 16, 1986, Plaintiff, Karen Jones, was transported in Defendant Miami-Liberty Cab Co.'s vehicle from Dayton, Ohio to Columbus, Ohio.

32. Defendant DBOE paid for the transportation of Plaintiff, Karen Jones, by Defendant Miami-Liberty Cab Co. to the Ohio State School for the Blind.

33. Defendants Miami-Liberty Cab Co. and DBOE were deliberately indifferent to the safety and care of Plaintiff Karen Jones by failing to protect her.

34. Defendants breached their special relationship with Plaintiff Karen Jones by failing to protect her.

35. On November 16, 1986, Plaintiff Karen Jones was transported in Defendant Miami-Liberty Cab Co.'s vehicle.

36. Defendant Slaughter was the driver of Defendant Miami-Libelrty Cab Co.'s vehicle that transported Plaintiff Karen Jones.

37. On November 16, 1986, in the course of Defendant Miami-Liberty Cab Co.'s transporting Plaintiff Karen Jones from Dayton to Columbus in accordance with its contract with Defendant DBOE, Defendant Slaughter sexually molested and maliciously and unlawfully assaulted and committed acts of gross sexual imposition upon Plaintiff Karen Jones by unlawfully and violently engaging in sexual intercourse with Plaintiff Karen Jones.

38. Defendant Slaughter sexually molested and abused Plaintiff Karen Jones.

39. Defendant Slaughter's conduct was outrageous, malicious, wanton and oppressive.

40. Defendant Miami-Liberty Cab Co. knew or should have known about the dangerous propensities of Defendant Slaughter.

41. As a direct and proximate result of the sexual assault and abuse of Plaintiff Karen Jones. Plaintiffs have suffered and continue to suffer extreme pain, physical harm, shock, mental anguish, and emotional distress.

42. Contrary to the provisions R.C. Section 3313.20, Plaintiff Karen Jones states that she has received no benefits as a result of said sexual abuse and the ensuing treatment.

43. As a direct and proximate result of Defendant Slaughter's unlawful sexual intercourse, Plaintiff Karen Jones conceived and became pregnant.

44. On August 9, 1987, Plaintiff Karen Jones gave birth to a baby girl, Sally Jones.

45. Defendant Slaughter is the natural and biological father of Sally Jones.

46. As a direct and proximate result of Defendants' acts, Plaintiff Karen Jones has been severely and permanently injured in that she conceived and bore a child for which provision for care must be had and for which Plaintiff Karen Jones is incompetent and unable to provide for Sally Jones' child care, necessities, medical, educational and recreational expenses until Sally Jones reaches majority.

47. The Defendants maliciously and wantonly interfered with and disrupted Plaintiff Karen Jones' education. This punishment is cruel, arbitrary, and in violation of state and federal law and the civil and constitutional rights of the Plaintiff Karen Jones.

48. As a direct and proximate result of Defendants' reckless, wanton, willful, malicious and oppressive acts, Plaintiffs have suffered great humiliation, shame, embarrassment and emotional distress.

49. Plaintiffs have suffered severe mental and emotional distress such that Plaintiff Karen Jones is afraid to attend school.

50. As a proximate result of Defendants' acts Plaintiffs have incurred medical expenses and will further incur such related medical expenses.

51. Defendant Miami-Liberty Cab Co. undertook to provide transportation for Plaintiff Karen Jones.

52. Defendant Miami-Liberty Cab Co. had a duty to exercise reasonable care for the safety of Plaintiff Karen Jones.

53. Defendant Miami-Liberty Cab Co. breached its duty of care to Plaintiff Karen Jones by hiring or retaining unqualified or irresponsible employees and personnel; by failing to establish or to enforce policies and procedures necessary to insure the safety of Plaintiff Karen Jones by failing to monitor the quality of care being provided to its passengers.

54. As a direct and proximate result of Defendant Miami-Liberty Cab Co.'s breach of its duty of care, Plaintiffs were injured.

55. Defendant DBOE undertook to provide transportation for Plaintiff Karen Jones.

56. Defendant DBOE had a duty to exercise due skill and care in selecting, hiring, firing and retaining responsible employees and services, but failed to establish or to enforce policies and procedures necessary to insure the safety of Plaintiff Karen Jones and failed to monitor the quality of care being provided to its students.

57. Defendant DBOE breached this duty of care by failing to select a responsible company and in failing to insure the safety and protection of Plaintiff Karen Jones.

58. As a direct and proximate result of Defendant DBOE's breach of its duty of care, Plaintiffs were injured.

59. Defendants DBOE and Miami-Liberty Cab Co. are responsible for selecting, hiring, firing, instructing, training, supervising and controlling all their employees, and for setting all of their policies for such. They also have a duty to protect and maintain a safe, violence-free environment for the students under their custody and supervision. They have knowingly failed to exercise their responsibilities in such a way so as to avoid and control the practices described in paragraphs 1 through 48 of this Second Amended Complaint.

60. Defendants DBOE and Miami-Liberty Cab Co. have knowledge of the denial of education, humiliation, degradation, sexual abuse, excessive physical force and inhumane treatment of its students. They have not taken steps to correct these practices, but have acquiesced in or condoned them.

61. The injuries and threatened future injuries to Plaintiffs, and to the other children in the DPS, are proximately caused by the actions and nonfeasance of Defendants DBOE and Miami-Liberty Cab Co. Defendants DBOE and Miami-Liberty Cab Co. have acted deliberately and with gross and reckless negligence, and have displayed deliberate indifference to the needs of Plaintiffs.

62. Defendants follow and have followed at all times relevant hereto, a pattern or practice of inflicting arbitrary and capricious acts on Plaintiff.

63. The denial of adequate education to Plaintiff Karen Jones, deprives her of her rights under the Eighth and Fourteenth Amendments to the United States Constitution, causing Plaintiffs irreparable injury.

64. The infliction of arbitrary, inhumane treatment and sexual molestation and abuse of Plaintiff Karen Jones and the interference and disruption of her education and family life constitutes cruel and unusual punishment and deprives Plaintiffs of their rights under the Eighth and Fourteenth Amendments to the United States Constitution, causing them irreparable injury.

65. As a direct and proximate result of Defendants' actions, Plaintiff have suffered physical harm, stigmatization, mental and emotional distress, humiliation, grief, anxiety, indignity, terror, and other damages to be adduced at trial for which there is no adequate remedy under state law.

FIRST CLAIM

66. Plaintiffs reallege and incorporate by reference paragraphs 1 through 65 of the Second Amended Complaint as if fully rewritten herein.

67. Defendants maintained a course of conduct and practice that violated Plaintiffs' civil and constitutional rights, proximately causing them injury, pursuant to 42 U.S.C. Section 1983.

SECOND CLAIM

68. Plaintiffs reallege and incorporate by reference paragrahs 1 through 67 of the Second Amended Complaint as if fully rewritten herein.

69. Defendant Slaughter tortiously assaulted Plaintiff Karen Jones, proximately causing her injury.

THIRD CLAIM

70. Plaintiffs reallege and incorporate by reference paragarphs 1 through 69 of the Second Amended Complaint as if fully rewritten herein.

7.1 Defendants DBOE and Miami-Liberty Cab Co., by failing to establish and enforce rules of conduct for their employees, by acquiescing in and condoning the patterns and practices of their employees, by failing to protect Plaintiff Karen Jones and to insure her safety, and by failing to exercise in a proper manner their power to select, hire, fire, train, supervise and control their employees, have through gross negligence breached a duty owed to Plaintiffs, proximately causing them injury.

FOURTH CLAIM

72. Plaintiffs reallege and incorporate by reference paragraphs 1 through 71 of the Second Amended Complaint as if fully rewritten herein.

7.3 The Defendants' actions were wanton and willful and constitute invasion of privacy.

FIFTH CLAIM

74. Plaintiffs reallege and incorporate by reference paragraphs 1 through 73 of the Second Amended Complaint as if fully rewritten herein.

75. Defendants' actions were intentionally and maliciously designed and executed so as to cause Plaintiffs to suffer severe emotional and mental distress.

76. Plaintiffs have suffered and will continue to suffer extreme hardship, severe mental and emotional distress, anguish, anxiety, humiliation, embarrassment

and actual impending irreparable damage in that they will be further harassed, coerced, intimidated and stigmatized, as well as deprived of their right to education.

SIXTH CLAIM

77. Plaintiffs reallege and incorporate by reference paragraphs 1 through 76 of the Second Amended Complaint as if fully rewritten herein.

78. As a direct and proximate result of Defendants' actions, Plaintiff Mary Jones has suffered a loss of her daughter's society and companionship.

SEVENTH CLAIM

79. Plaintiffs reallege and incorporate by reference paragraphs 1 through 78 of the Second Amended Complaint as if fully rewritten herein.

80. As a direct and proximate result of Defendants' actions, Plaintiff, Sally Jones, has suffered a loss of her mother, Karen Jones', society and companionship.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this honorable Court grant the following relief:

1. Award damages against Defendants joint and severally;

2. Award Plaintiffs compensatory damages against Defendants in the amount of $1,520,000.00 as per prayer for relief No. 1;

3. Award Plaintiffs punitive damages against Defendants in the amount of $1,500,000.00 as per prayer for relief No. 1;

4. Enter preliminary and permanent injunctions against Defendants, their agents, employees and assigns to: (a) Exercise their duties to select, hire, fire, train, supervise and control Dayton Public Schools' policy so as to eliminate sexual molestation and abuse and the interference and disruption of children's education, such as Plaintiff Karen Jones; (b) Provide adequate education for children; and (c) Provide safe transportation of children without violence;

5. Award Plaintiffs their costs and expenses of this action, including reasonable attorney's fees pursuant to 42 U.S.C. Section 1988 and the EHA as per prayer for relief No. 1;

6. Demand for a jury trial pursuant to Civil Rule 38; and,

7. Award any other and further relief as this Court may deem just and proper.

Respectfully submitted,

ALVARENE N. OWENS
ALVARENE N. OWENS CO., L.P.A.
1101 Salem Avenue
Dayton, Ohio 45406
(513) 275-6842

NWABUEZE V. OKOCHA
OKOCHA & ASSOCIATES CO., L.P.A.
650 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113
(216) 574-9400

Attorneys for Plaintiffs

PLAINTIFFS' TENDER OF SECOND AMENDED COMPLAINT

Case No. 87-3339

(Judge Brown)

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

MARY JONES, *et al.*,
Plaintiffs,

vs.

DAYTON BOARD OF EDUCATION, *et al.*,
Defendants.

In compliance with the Court's Order of February 3, 1989, Plaintiffs' hereby submit the attached Second Amended Complaint for approval.

Respectfully submitted,

ALVARENE N. OWENS
ALVARENE N. OWENS CO., L.P.A.
1101 Salem Avenue
Dayton, Ohio 45406
(513) 275-6842

NWABUEZE OKOCHA
OKOCHA & ASSOCIATES CO., L.P.A.
650 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113
(216) 574-9400

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon all counsel on this 9th day of February, 1989 by regular U.S. Mail.

ALVARENE N. OWENS
NWABUEZE OKOCHA
Attorneys for Plaintiffs

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Case No. 87-3339

(Judge Brown)

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

MARY JONES, as Mother and
Guardian on behalf of
Karen Jones, a minor and an
incompetent
336 Brookside Drive
Dayton, Ohio 45406

MARY JONES, as Next Friend and
Guardian on behalf of Sally
Jones, a minor
336 Brookside Drive
Dayton, Ohio 45406

and

MARY JONES
336 Brookside Drive
Dayton, Ohio 45406,
Plaintiffs,

vs.

DAYTON BOARD OF EDUCATION
348 W. First Street
Dayton, Ohio 45402

MIAMI LIBERTY CAB CO.
1406 Third National Building
Dayton, Ohio 45402

and

EDDIE SLAUGHTER
4821 Liberty Road
Dayton, Ohio 45418,
Defendants.

Now comes the Plaintiffs, Mary Jones, and Karen Jones and Sally Jones, minors, by and through their next friend, mother and guardian, Mary Jones, and for their Second Amended Complaint aver as follows:

1. Plaintiff Karen Jones is a minor, blind, emotionally disturbed, mentally retarded, handicapped and an incompetent individual pursuant to state and federal law, residing in Dayton, Ohio.

2. Plaintiff Sally Jones is a minor, and is the daughter of Plaintiff Karen Jones.

3. Plaintiff Mary Jones is the mother, next friend and guardian of Plaintiff, Karen Jones, and a resident of Dayton, Ohio.

4. Defendant Dayton Board of Education (hereinafter "DBOE") is a political subdivision of the State of Ohio and is charged with the government of the Dayton Public Schools (hereinafter "DPS"), and vested with the statutory duty pursuant to the provisions of Title 33 of Ohio Revised Code.

5. Defendant Miami-Liberty Cab Co. is at all times relevant hereto, a taxicab company and/or a common carrier, engaged in the transportation of persons or property, and organized under the laws of the State of Ohio with its principal place of business located in the City of Dayton, County of Montgomery, State of Ohio.

6. Defendant Eddie Slaughter is at all times relevant hereto, a resident of the City of Dayton, and employed as a cab driver by, or as an agent of Defendant Miami-Liberty Cab Co.

7. At all times relevant hereto, all of the Defendants acted under color of state law.

8. At all times relevant hereto, all of the Defendants were aware of the peculiar susceptibility and vulnerability of Plaintiff Karen Jones.

9. DPS evaluated and designed Plaintiff Karen Jones' educational plan and placed her in the Ohio State School for the Blind pursuant to the Education of the Handicapped Act (hereinafter "EHA"), 20 U.S.C. Sections 1400 *et seq.* and pursuant to state law.

10. In compliance with its statutory duty, Defendant DBOE arranged and employed Defendant Miami-Liberty Cab Co. for the transportation of Plaintiff Karen Jones to the Ohio State School for the Blind by contract. A true and accurate copy of the contract is in the possession of Defendants DBOE and Miami-Liberty Cab Co.

11. Defendant DBOE bore an affirmative obligation to provide adequate transportation and for the safety of Plaintiff Karen Jones.

12. As a result of the contract, Defendant DBOE delegated its function of transporting its students, such as Plaintiff Karen Jones to Defendant Miami-Liberty Cab Co.

13. Over a period of several years, Defendant Miami-Liberty Cab Co. transported Plaintiff Karen Jones from Dayton, Ohio, to the Ohio State School for the Blind, Columbus, Ohio, and vice versa.

14. Defendant Miami-Liberty Cab Co. received over five thousand ($5,000.00) dollars per annum from Defendant DBOE as compensation for transportation of Defendant DBOE's students.

15. On November 16, 1986, in the course of Defendant Miami-Liberty Cab Co.'s transporting Plaintiff Karen Jones from Dayton to Columbus in accordance with its contract with Defendant DBOE, Defendant Slaughter sexually molested and maliciously and unlawfully assaulted and committed acts of gross sexual imposition upon Plaintiff Karen Jones by unlawfully and violently engaging in sexual intercourse with Plaintiff Karen Jones.

16. Defendant Slaughter's conduct was outrageous, malicious, reckless, wanton and oppressive.

17. Defendant Miami-Liberty Cab Co. knew or should have known about the dangerous propensities of Defendant Slaughter.

18. Contrary to the provisions R.C. Section 3313.20, Plaintiff Karen Jones states that she has received no benefits as a result of said sexual abuse and the ensuing treatment.

19. As a direct and proximate result of Defendant Slaughter's unlawful sexual intercourse, Plaintiff Karen Jones conceived and became pregnant.

20. On August 9, 1987, Plaintiff Karen Jones gave birth to a baby girl, Plaintiff Sally Jones.

21. Defendant Slaughter is the natural and biological father of Plaintiff Sally Jones.

22. Defendants Miami-Liberty Cab Co. and DBOE were deliberately indifferent to the safety and care of Plaintiff Karen Jones by failing to protect her.

23. Defendants breached their special relationship with Plaintiff Karen Jones by failing to protect her.

24. As a direct and proximate result of Defendants' acts, Plaintiff Karen Jones has been severely and permanently injured in that she conceived and bore a child for which provision for care must be had and for which Plaintiff Karen Jones is incompetent and unable to provide for Plaintiff Sally Jones' child care, necessities, medical, educational and recreational expenses until Plaintiff Sally Jones reaches majority.

25. The Defendants maliciously, recklessly, and wantonly interfered with and disrupted Plaintiff Karen Jones' education. This punishment is cruel and unusual, arbitrary, and in violation of state and federal law and the civil and constitutional rights of the Plaintiff Karen Jones.

26. As a direct and proximate result of Defendants' reckless, wanton, willful, malicious and oppressive acts, Plaintiffs have suffered great humiliation, shame, embarrassment, and emotional distress.

27. As a proximate result of Defendants' acts Plaintiffs have incurred medical expenses and will further incur such related medical expenses.

28. Defendant DBOE breached this duty of care by failing to select a responsible company and in failing to insure the safety and protection of Plaintiff Karen Jones.

29. Defendants DBOE and Miami-Liberty Cab Co. are responsible for selecting, hiring, firing, instructing, training, supervising and controlling all their employees, and for setting all of their policies for such. They also have a duty to protect and maintain a safe, violence-free environment for the students under their custody and

supervision. They have knowingly failed to exercise their responsibilities in such a way so as to avoid and control the practices described in paragraphs 1 through 28 of this Second Amended Complaint.

30. Defendants DBOE and Miami-Liberty Cab Co. have knowledge of the denial of education, humiliation, degradation, sexual abuse, excessive physical force and inhumane treatment of its students. They have not taken steps to correct these practices, but have acquiesced in or condoned them.

31. The injuries and threatened future injuries to Plaintiffs, and to the other children in the DPS, are proximately caused by the actions and nonfeasance of Defendants DBOE and Miami-Liberty Cab Co. Defendants DBOE and Miami-Liberty Cab Co. have acted deliberately and with gross and reckless negligence, and have displayed deliberate indifference to the needs of Plaintiffs.

32. Defendants follow and have followed at all times relevant hereto, a pattern or practice of inflicting arbitrary and capricious acts on Plaintiffs.

33. The denial of adequate education to Plaintiff Karen Jones deprives her of her rights under the Eighth and Fourteenth Amendments to the United States Constitution, and the EHA, causing Plaintiffs irreparable injury.

34. The infliction of arbitrary, inhumane treatment and sexual molestation and abuse of Plaintiff Karen Jones and the interference and abuse of Plaintiff Karen Jones and the interference and disruption of her education and family life constitutes cruel and unusual punishment and deprives Plaintiffs of their rights under

the Eighth and Fourteenth Amendments to the United States Constitution and the EHA, causing them irreparable injury.

35. As a direct and proximate result of Defendants' actions, Plaintiffs have suffered physical harm, stigmatization, mental and emotional distress, humiliation, grief, anxiety, indignity, terror, and other damages to be adduced at trial for which there is no adequate remedy under state law.

FIRST CLAIM

36. Plaintiffs reallege and incorporate by reference paragraphs 1 through 35 of the Second Amended Complaint as if fully rewritten herein.

37. Defendants maintained a course of conduct and practice that violated Plaintiffs' civil and constitutional rights, proximately causing them injury, pursuant to 42 U.S.C. Section 1983.

SECOND CLAIM

38. Plaintiffs reallege and incorporate by reference paragraphs 1 through 37 of the Second Amended Complaint as if fully rewritten herein.

39. Defendant Slaughter tortiously assaulted Plaintiff Karen Jones, proximately causing her injury.

THIRD CLAIM

40. Plaintiffs reallege and incorporate by reference paragraph 1 through 39 of the Second Amended Complaint as if fully rewritten herein.

41. Defendants DBOE and Miami-Liberty Cab Co., by failing to establish and enforce rules of conduct for their employees, by acquiescing in and condoning the patterns and practices of their employees, by failing to protect Plaintiff Karen Jones and to insure her safety, and by failing to exercise in a proper manner their power to select, hire, fire, train, supervise and control their employees, have through gross negligence breached a duty owed to Plaintiffs, proximately causing them injury.

FOURTH CLAIM

42. Plaintiffs reallege and incorporate by reference paragraphs 1 through 41 of the Second Amended Complaint as if fully rewritten herein.

43. The Defendants' actions were wanton and willful and constitute invasion of privacy.

FIFTH CLAIM

44. Plaintiffs reallege and incorporate by reference paragraphs 1 through 43 of the Second Amended Complaint as if fully rewritten herein.

45. Defendants' actions were intentionally and maliciously designed and executed so as to cause Plaintiffs to suffer severe emotional and mental distress.

46. Plaintiffs have suffered and will continue to suffer extreme hardship, severe mental and emotional distress, anguish, anxiety, humiliation, embarrassment and actual impending irreparable damage in that they will be further harassed, coerced, intimidated and stigmatized, as well as deprived of their right to education.

SIXTH CLAIM

47. Plaintiffs reallege and incorporate by reference paragraphs 1 through 46 of the Second Amended Complaint as if fully rewritten herein.

48. As a direct and proximate result of Defendants' actions, Plaintiff Mary Jones has suffered a loss of her daughter's society and companionship.

SEVENTH CLAIM

49. Plaintiffs reallege and incorporate by reference paragraphs 1 through 49 of the Second Amended Complaint as if fully rewritten herein.

50. As a direct and proximate result of Defendants' actions, Plaintiff Sally Jones, has suffered a loss of her mother, Karen Jones', society and companionship.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this honorable Court grant the following relief:

1. Award damages against Defendants joint and severally;

2. Award Plaintiffs compensatory damages against Defendants in the amount of $1,520,000.00 as per prayer for relief No. 1;

3. Award Plaintiffs punitive damages against Defendants in the amount of $1,500,000.00 as per prayer for relief No. 1;

4. Enter preliminary and permanent injunctions against Defendants, their agents, employees and assigns to: (a) Exercise their duties to select, hire, fire, train, supervise and control Dayton Public Schools' policy so

as to eliminate sexual molestation and abuse and the interference and disruption of children's education, such as Plaintiff Karen Jones; (b) Provide adequate education for children; and (c) Provide safe transportation of children without violence;

5. Award Plaintiffs their costs and expenses of this action, including reasonable attorney's fees pursuant to 42 U.S.C. section 1988 and the EHA as per prayer for relief No. 1;

6. Demand for a jury trial pursuant to Civil Rule 38; and,

7. Award any other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ ALVARENE N. OWENS
ALVARENE N. OWENS CO., L.P.A.
1101 Salem Avenue
Dayton, Ohio 45406
(513) 275-6842

/s/ NWABUEZE V. OKOCHA
OKOCHA & ASSOCIATES CO., L.P.A.
650 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113
(216) 574-9400

Attorneys for Plaintiffs

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Case No. 87-3339

(Judge Brown)

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

MARY JONES, as Mother and
Guardian on behalf of
Karen Jones, a minor and
an incompetent
336 Brookside Drive
Dayton, Ohio 45406

MARY JONES, as Next Friend and
Guardian on behalf of Sally
Jones, a minor
336 Brookside Drive
Dayton, Ohio 45406

and

MARY JONES
336 Brookside Drive
Dayton, 45406,
Plaintiffs,

vs.

DAYTON BOARD OF EDUCATION
348 W. First Street
Dayton, Ohio 45402

MIAMI LIBERTY CAB CO.
1406 Third National Building
Dayton, Ohio 45402

and

EDDIE SLAUGHTER
4821 Liberty Road
Dayton, Ohio 45418,
Defndants.

Now comes the Plaintiffs, Mary Jones, and Karen Jones and Sally Jones, minors, by and through their next friend, mother and guardian, Mary Jones, and for their Second Amended Complaint aver as follows:

1. Plaintiff Karen Jones is a minor, blind, emotionally disturbed, mentally retarded, handicapped and incompetent individual, residing in Dayton, Ohio.

2. Plaintiff Sally Jones is a minor, and is the daughter of Plaintiff Karen Jones.

3. Plaintiff Mary Jones is the mother, next friend and natural guardian of Plaintiff, Karen Jones, and a resident of Dayton, Ohio.

4. Defendant Dayton Board of Education (hereinafter "DBOE") is a political subdivision of the State of Ohio and is charged with the government of the Dayton Public Schools (hereinafter "DPS").

5. Defendant Miami-Liberty Cab Co. is at all times relevant hereto, a taxicab company and/or a common carrier, engaged in the transportation of persons or property, and organized under the laws of the State of Ohio with its principal place of business located in the City of Dayton, County of Montgomery, State of Ohio.

6. Defendant Eddie Slaughter is at all times relevant hereto, a resident of the City of Dayton, and employed as a cab driver by, or as an agent of Defendant Miami-Liberty Cab Co.

7. At all times relevant hereto, all of the Defendants were aware of the peculiar susceptibility and vulnerability of Plaintiff Karen Jones.

8. DPS evaluated and designed Plaintiff Karen Jones' educational plan and placed her in the Ohio State School for the Blind.

9. Defendant DBOE arranged and employed Defendant Miami-Liberty Cab Co. for the transportation of Plaintiff Karen Jones to the Ohio State School for the Blind by contract. A true and accurate copy of the contract is in the possession of Defendants DBOE and Miami-Liberty Cab Co.

10. On November 16, 1986, in the course of Defendant Miami-Liberty Cab Co.'s transporting Plaintiff Karen Jones from Dayton to Columbus in accordance with its contract with Defendant DBOE, Defendant Slaughter unlawfully and violently engaged in sexual intercourse with Plaintiff Karen Jones.

11. Defendant Miami-Liberty Cab Co. knew or should have known about the dangerous propensities of Defendant Slaughter.

12. As a direct and proximate result of Defendant Slaughter's sexual intercourse, Plaintiff Karen Jones conceived and became pregnant.

13. On August 9, 1987, Plaintiff Karen Jones gave birth to a baby girl, Plaintiff Sally Jones.

14. As a direct and proximate result of Defendants' acts, Plaintiffs Karen Jones has been severely and permanently injured in that she conceived and bore a

child for which provision for care must be had and for which Plaintiff Karen Jones is incompetent and unable to provide for Plaintiff Sally Jones' child care, necessities, medical, educational and recreational expenses.

15. As a direct and proximate result of Defendants' acts, Plaintiffs have suffered great humiliation, shame, embarrassment and emotional distress.

16. As a proximate result of Defendants' acts Plaintiffs have incurred medical expenses and will further incur such related medical expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this honorable Court grant the following relief:

1. Award compensatory damages against Defendants joint and severally in the amount of $1,520,000.00; award Plaintiffs punitive damages against Defendants in the amount of $1,500,000.00, reasonable attorney fees and costs; award any other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ALVARENE N. OWENS
ALVARENE N. OWENS CO., L.P.A.
1101 Salem Avenue
Dayton, Ohio 45406
(513) 275-6842

/s/NWABUEZE V. OKOCHA
OKOCHA & ASSOCIATES CO., L.P.A.
650 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113
(216) 574-9400

Attorneys for Plaintiffs

OHIO REVISED CODE

§2305.19 Saving in case of reversal.

In an action commenced, or attempted to be commenced, if in due time a judgment for the plaintiff is reversed, or if the plaintiff fails otherwise than upon the merits, and the time limited for the commencement of such action at the date of reversal or failure has expired, the plaintiff, or, if he dies and the cause of action survives, his representatives may commence a new action within one year after such date.

* * *

§2744.03 Defenses or immunities of subdivision and employee.

(A) In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to persons or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability:

(1) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.

* * *

(3) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

* * *

§2744.09 Actions and claims exempted from provisions.

This chapter does not apply to, and shall not be construed to apply to, the following:

* * *

(E) Civil claims based upon alleged violation of the constitution or statutes of the United States, except that the provisions of section 2744.07 of the Revised Code shall apply to such claims or related civil actions.

FEDERAL RULES OF CIVIL PROCECURE

RULE 8. GENERAL RULES OF PLEADING

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(e) Pleading to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed uon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

OHIO RULES OF CIVIL PROCEDURE

RULE 8. GENERAL RULES OF PLEADING

(A) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(E) Pleading to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

RULE 16. AMENDED AND SUPPLEMENTAL PLEADINGS

(A) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty-eight days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party. Leave of court shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fourteen days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

RULE 41. DISMISSAL OF ACTIONS

(A) Voluntary Dismissal; Effect Thereof.

(1) By Plaintiff by Stipulation. Subject to the provisions of Rule 23(E) and Rule 66, an action may be dismissed by the plaintiff without order of court (a) by filing a notice of dismissal at any time before the commencement of trial unless a counterclaim which cannot remain pending for independent adjudication by the court has been served by the defendant or (b) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court, an action based on or including the same claim.

* * *

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulations, custom or usage of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law suit in equity, or other proper proceeding for redress.